

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

THOMAS UTTECHT, SANJUANA)
UTTECHT, BENJAMIN UTTECHT,)
SILAS UTTECHT, ASHER UTTECHT,)
PHOEBE UTTECHT, LEAH UTTECHT,)

Plaintiffs,)

8:12CV347

v.)

JANET NAPOLITANO, Secretary)
Department of Homeland)
Security; SCOTT BANIECKE,)
Field Office Director,)
Immigration and Customs)
Enforcement; MARK FOXALL,)
Director, Department of)
Corrections, Douglas County,)
ERIC HOLDER, Attorney General)
of the United States,)

Defendants.)

MEMORANDUM OPINION

This matter is before the Court on the defendants' motion to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction, and insufficient service of process (Filing No. [25](#)). The Court finds that the motion should be granted.

On a motion to dismiss based on insufficient service of process at the pleading stage, plaintiffs bear the burden of establishing a prima facie case of sufficiency of service of process. *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1387 (8th Cir. 1995). In the present case, the Government contacted plaintiffs' counsel to alert him to the fact that the Government had not received proper service. On December 13, 2012, plaintiffs' counsel

docketed a document titled "SUMMONS Returned Executed," presumably in an attempt to prove compliance with the requirements for serving the United States, its Agencies, Officers, or Employees. See Fed. R. Civ. P. Rule 4(i)(1)(A)(i) (requiring delivery of a copy of the summons to the United States Attorney). However, the docketed summons did not bear the signature of the Clerk of the Court or the Court's seal as required by Rule 4. Fed. Civ. P. Rule 4(a)(1).

Since that time, plaintiffs have not attempted to remedy this defect, submit further evidence of the sufficiency of process, or file a timely response to the defendants' motion to dismiss. The Court finds that plaintiffs have failed to make a prima facie showing of the sufficiency of service of process. A separate order will be entered in accordance with this memorandum opinion.

DATED this 4th day of April, 2013.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court